

**ASSEMBLY BILL**

**No. 958**

**Introduced by Assembly Member La Suer**

February 20, 2003

---

---

An act to amend Section 209 of the Penal Code, relating to kidnapping.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, La Suer. Kidnapping: lewd and lascivious acts.

Under existing law, simple kidnapping is a felony, punishable by imprisonment in the state prison for 3, 5, or 8 years. However, existing law makes kidnapping a child under 14 years of age punishable by imprisonment in the state prison for 5, 8, or 11 years, unless it is committed by a parent or person provided access to the child by court order. Existing law also provides that a person who kidnaps a child under 14 years of age and who does lewd or lascivious acts with that child either by force or duress, or that include acts of substantial sexual conduct, as specified, is punishable by life in prison with a minimum of 25 years before parole, if the movement of the victim substantially increased the risk of harm to the victim, or if the kidnapper has specified prior convictions for sexual misconduct. Lewd and lascivious acts with a child under 14 years of age by force or duress, or including acts of substantial sexual conduct, is punishable by life in prison with a minimum of 15 years before parole if the assailant kidnaps the victim, but the kidnapping does not substantially increase the risk of harm to the victim. However, if this kidnapping and sexual misconduct is combined with another of a specified set of aggravating factors, existing law makes the minimum parole eligibility after 25 years in prison.

Existing law also provides that, under specified circumstances, any person who kidnaps or carries away any individual with the intent to commit robbery, rape, spousal rape, sodomy, oral copulation, or rape by instrument shall be punished by imprisonment in the state prison for life with the possibility of parole.

This bill would provide that a person who kidnaps or carries away any child under 14 years of age to commit a lewd and lascivious act, as specified, shall be punished by imprisonment in the state prison for life with the possibility of parole.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 209 of the Penal Code is amended to  
2 read:

3 209. (a) Any person who seizes, confines, inveigles, entices,  
4 decoys, abducts, conceals, kidnaps or carries away another person  
5 by any means whatsoever with intent to hold or detain, or who  
6 holds or detains, that person for ransom, reward or to commit  
7 extortion or to exact from another person any money or valuable  
8 thing, or any person who aids or abets any such act, is guilty of a  
9 felony, and upon conviction thereof, shall be punished by  
10 imprisonment in the state prison for life without possibility of  
11 parole in cases in which any person subjected to any such act  
12 suffers death or bodily harm, or is intentionally confined in a  
13 manner which exposes that person to a substantial likelihood of  
14 death, or shall be punished by imprisonment in the state prison for  
15 life with the possibility of parole in cases where no such person  
16 suffers death or bodily harm.

17 (b) (1) Any person who kidnaps or carries away any individual  
18 to commit robbery, rape, spousal rape, oral copulation, sodomy, or  
19 sexual penetration in violation of Section 289, shall be punished



1 by imprisonment in the state prison for life with possibility of  
2 parole.

3 (2) *Any person who kidnaps or carries away any child under 14*  
4 *years of age to commit any act described in subdivision (a) of*  
5 *Section 288, shall be punished by imprisonment in the state prison*  
6 *for life with possibility of parole.*

7 (3) This subdivision shall only apply if the movement of the  
8 victim is beyond that merely incidental to the commission of, and  
9 increases the risk of harm to the victim over and above that  
10 necessarily present in, the intended underlying offense.

11 (c) In all cases in which probation is granted, the court shall,  
12 except in unusual cases where the interests of justice would best  
13 be served by a lesser penalty, require as a condition of the  
14 probation that the person be confined in the county jail for 12  
15 months. If the court grants probation without requiring the  
16 defendant to be confined in the county jail for 12 months, it shall  
17 specify its reason or reasons for imposing a lesser penalty.

18 (d) Subdivision (b) shall not be construed to supersede or affect  
19 Section 667.61. A person may be charged with a violation of  
20 subdivision (b) and Section 667.61. However, a person may not be  
21 punished under subdivision (b) and Section 667.61 for the same  
22 act that constitutes a violation of both subdivision (b) and Section  
23 667.61.

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.